

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1059

Introduced by Avery, 28.

Read first time January 21, 2010

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to initiative and referendum petitions; to
2 amend sections 32-101, 32-117, 32-118, 32-628, 32-1401,
3 32-1402, 32-1405, 32-1409, 32-1412, and 84-205, Reissue
4 Revised Statutes of Nebraska; to change provisions
5 relating to preparation of initiative and referendum
6 petitions; to provide for digital and electronic
7 signatures on petitions via the Internet; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 32-101 Sections 32-101 to 32-1551 and section 8 of this
4 act shall be known and may be cited as the Election Act.

5 Sec. 2. Section 32-117, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 32-117 Sign ~~shall mean~~ means to affix a signature. For
8 purposes of initiative and referendum petitions, sign includes to
9 affix a digital or electronic signature if authorized under section
10 8 of this act.

11 Sec. 3. Section 32-118, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 32-118 Signature ~~shall mean~~ means the name of a person
14 written with his or her own hand or the mark of a person unable to
15 write his or her name if the person's name is written by some other
16 person and the mark is made near the name by the person unable to
17 write his or her name. For purposes of initiative and referendum
18 petitions, signature includes a digital or electronic signature if
19 authorized under section 8 of this act.

20 Sec. 4. Section 32-628, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 32-628 (1) ~~All~~ This section applies to all petitions
23 prepared or filed pursuant to the Election Act or any petition
24 which requires the election commissioner or county clerk to verify
25 signatures by utilizing the voter registration register except as

1 otherwise provided in section 8 of this act. Such petitions shall
2 provide a space at least two and one-half inches long for written
3 signatures, a space at least two inches long for printed names,
4 and sufficient space for date of birth and street name and number,
5 city or village, and zip code. Lines on each petition shall not be
6 less than one-fourth inch apart. Petitions may be designed in such
7 a manner that lines for signatures and other information run the
8 length of the page rather than the width. Petitions shall provide
9 for no more than twenty signatures per page.

10 (2) For the purpose of preventing fraud, deception,
11 and misrepresentation, every sheet of every petition containing
12 signatures shall have upon it, above the signatures, the statements
13 contained in this subsection, except that a petition for recall
14 of an elected official shall also have the additional information
15 specified in subsection (2) of section 32-1304. The statements
16 shall be printed in boldface type in substantially the following
17 form:

18 WARNING TO PETITION SIGNERS--VIOLATION OF ANY OF THE
19 FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL
20 CHARGES: Any person who signs any name other than his or her own to
21 any petition or who is not qualified to sign the petition shall be
22 guilty of a Class I misdemeanor. Any person who falsely swears to
23 a circulator's affidavit on a petition, who accepts money or other
24 things of value for signing a petition, or who offers money or
25 other things of value in exchange for a signature upon any petition

1 shall be guilty of a Class IV felony.

2 (3) Every sheet of a petition which contains signatures
3 shall have upon it, below the signatures, an affidavit as provided
4 in this subsection, except that the affidavit for a petition for
5 recall of an elected official shall also include the additional
6 language specified in subsection (3) of section 32-1304. The
7 affidavit shall be in substantially the following form:

8 STATE OF NEBRASKA)

9) ss.

10 COUNTY OF)

11 , (name of circulator) being
12 first duly sworn, deposes and says that he or she is the circulator
13 of this petition containing signatures, that he or she
14 is an elector of the State of Nebraska, that each person whose
15 name appears on the petition personally signed the petition in
16 the presence of the affiant, that the date to the left of each
17 signature is the correct date on which the signature was affixed
18 to the petition and that the date was personally affixed by the
19 person signing such petition, that the affiant believes that each
20 signer has written his or her name, street and number or voting
21 precinct, and city, village, or post office address correctly, that
22 the affiant believes that each signer was qualified to sign the
23 petition, and that the affiant stated to each signer the object of
24 the petition as printed on the petition before he or she affixed
25 his or her signature to the petition.

1 Circulator

2 Address

3 Subscribed and sworn to before me, a notary public, this
4 day of 20.... at, Nebraska.

5 Notary Public

6 (4) Each sheet of a petition shall have upon its face
7 and in plain view of persons who sign the petition a statement in
8 letters not smaller than sixteen-point type in red print on the
9 petition. If the petition is circulated by a paid circulator, the
10 statement shall be as follows: This petition is circulated by a
11 paid circulator. If the petition is circulated by a circulator who
12 is not being paid, the statement shall be as follows: This petition
13 is circulated by a volunteer circulator.

14 Sec. 5. Section 32-1401, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 32-1401 The form of a petition for initiating any law or
17 any amendment to the Constitution of Nebraska shall comply with the
18 requirements of sections 32-628 and 32-1403 and section 8 of this
19 act and shall be substantially as follows:

20 Initiative Petition

21 The object of this petition is to
22 (Print a concise statement in large type
23 of the legal effect of the filing of the petition and the object
24 sought to be secured by submitting the measure to the voters).

25 To the Honorable, Secretary

1 of State for the State of Nebraska:

2 We, the undersigned residents of the State of Nebraska
3 and the county of, respectfully demand that the
4 following proposed law (or amendment to the Constitution of
5 Nebraska as the case may be) shall be referred to the registered
6 voters of the state for their approval or rejection at the general
7 election to be held on the day of 20...., and each
8 for himself or herself says:

9 I have personally signed this petition on the date
10 opposite my name;

11 I am a registered voter of the State of Nebraska and
12 county of and am qualified to sign this petition or I
13 will be so registered and qualified on or before the date on which
14 this petition is required to be filed with the Secretary of State;
15 and

16 My printed name, date of birth, street and number or
17 voting precinct, and city, village, or post office address are
18 correctly written after my signature.

19 (Here follow numbered lines for signature, printed name,
20 date of birth, date, street and number or voting precinct, and
21 city, village, or post office address.)

22 Sec. 6. Section 32-1402, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 32-1402 The form of a petition for ordering a referendum
25 upon any act or any part of any act passed by the Legislature

1 of the State of Nebraska shall comply with the requirements of
2 sections 32-628 and 32-1403 and section 8 of this act and shall be
3 substantially as follows:

4 Referendum Petition

5 The object of this petition is to
6 (Print a concise statement in large type
7 of the legal effect of the filing of the petition and the object
8 sought to be secured by submitting the measure to the voters).

9 To the Honorable, Secretary
10 of State for the State of Nebraska:

11 We, the undersigned residents of the State of Nebraska
12 and the county of, respectfully order that
13 Legislative Bill No. entitled (title of
14 act and, if the petition is against less than the whole act,
15 then set forth here the part or parts on which the referendum is
16 sought), passed by the Legislature of the State
17 of Nebraska at its Session, shall be referred to the
18 registered voters of the state for retention or repeal at the
19 general election to be held on the day of 20...., and
20 each for himself or herself says:

21 I have personally signed this petition on the date
22 opposite my name;

23 I am a registered voter of the State of Nebraska and
24 county of and am qualified to sign this petition or I
25 will be so registered and qualified on or before the date on which

1 this petition is required to be filed with the Secretary of State;
2 and

3 My printed name, date of birth, street and number or
4 voting precinct, and city, village, or post office address are
5 correctly written after my signature.

6 (Here follow numbered lines for signature, printed name,
7 date, date of birth, street and number or voting precinct, and
8 city, village, or post office address.)

9 Sec. 7. Section 32-1405, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 32-1405 (1) Prior to obtaining any signatures on an
12 initiative or referendum petition, a statement of the object of
13 the petition and the text of the measure shall be filed with
14 the Secretary of State together with a sworn statement containing
15 the names and street addresses of every person, corporation, or
16 association sponsoring the petition.

17 (2) Upon receipt of the filing, the Secretary of State
18 shall transmit the text of the proposed measure to the Revisor
19 of Statutes. The Revisor of Statutes shall review the proposed
20 measure and suggest changes as to form and draftsmanship. The
21 revisor shall complete the review within ten days after receipt
22 from the Secretary of State. The Secretary of State shall provide
23 the results of the review and suggested changes to the sponsor
24 but shall otherwise keep them confidential for five days after
25 receipt by the sponsor. The Secretary of State shall then maintain

1 the opinion as public information and as a part of the official
2 record of the initiative. The suggested changes may be accepted or
3 rejected by the sponsor.

4 (3) ~~The~~ If requested by the sponsor, the Secretary of
5 State shall prepare five camera-ready copies of the petition from
6 the information filed by the sponsor and any changes accepted by
7 the sponsor and shall provide the copies to the sponsor within five
8 days after receipt of the review required in subsection (2) of this
9 section. The sponsor shall print the petitions to be circulated
10 from the forms provided.

11 ~~(4) The changes made to this section by Laws 1995, LB~~
12 ~~337 shall apply to initiative and referendum petitions filed on or~~
13 ~~after September 9, 1995.~~

14 Sec. 8. (1) The Secretary of State shall design a
15 system to allow electors to use digital or electronic signatures
16 as defined in section 86-611 to sign initiative and referendum
17 petitions via the Internet at the request of the sponsors of the
18 petitions. The sponsors may choose to use petitions conforming to
19 this section or section 32-628 or both.

20 (2) The petition form used via the Internet shall comply
21 with sections 32-1401 to 32-1403. For purposes of petitions via
22 the Internet, there shall be no circulator. The petition shall
23 be on the Secretary of State's web site. The elector shall
24 be able to view the petition, affix his or her digital or
25 electronic signature, complete the required information, and return

1 the petition electronically to the Secretary of State.

2 (3) For purposes of preventing fraud, deception, and
3 misrepresentation, every petition authorized under this section
4 shall have upon it, above the place for a signature, the statements
5 contained in this subsection. The statements shall be printed in
6 boldface type in substantially the following form:

7 WARNING TO PETITION SIGNERS—VIOLATION OF ANY OF THE
8 FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL
9 CHARGES: Any person who signs any name other than his or her own to
10 any petition or who is not qualified to sign the petition shall be
11 guilty of a Class I misdemeanor. Any person who accepts money or
12 other things of value for signing a petition or who offers money or
13 other things of value in exchange for a signature upon any petition
14 shall be guilty of a Class IV felony.

15 (4) The Secretary of State may adopt and promulgate rules
16 and regulations necessary to implement this section.

17 Sec. 9. Section 32-1409, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 32-1409 (1) Upon the receipt of the petitions, the
20 Secretary of State, with the aid and assistance of the election
21 commissioner or county clerk, shall determine the validity and
22 sufficiency of signatures on the pages of the filed petition.
23 The Secretary of State shall deliver the various pages of the
24 filed petition to the election commissioner or county clerk by
25 hand carrier, by use of law enforcement officials, or by certified

1 mail, return receipt requested. Upon receipt of the pages of the
2 petition, the election commissioner or county clerk shall issue
3 to the Secretary of State a written receipt that the pages of
4 the petition are in the custody of the election commissioner or
5 county clerk. The election commissioner or county clerk shall
6 determine if each signer was a registered voter on or before the
7 date on which the petition was required to be filed with the
8 Secretary of State. The election commissioner or county clerk shall
9 compare the signer's signature, printed name, date of birth, street
10 name and number or voting precinct, and city, village, or post
11 office address with the voter registration records to determine
12 whether the signer was a registered voter. The determination of
13 the election commissioner or county clerk may be rebutted by any
14 credible evidence which the election commissioner or county clerk
15 finds sufficient. The express purpose of the comparison of names
16 and addresses with the voter registration records, in addition to
17 helping to determine the validity of such petition, the sufficiency
18 of such petition, and the qualifications of the signer, shall be
19 to prevent fraud, deception, and misrepresentation in the petition
20 process.

21 (2) Upon completion of the determination of registration,
22 the election commissioner or county clerk shall prepare in writing
23 a certification under seal setting forth the name and address of
24 each signer found not to be a registered voter and the petition
25 page number and line number where the name is found, and if the

1 reason for the invalidity of the signature or address is other than
2 the nonregistration of the signer, the election commissioner or
3 county clerk shall set forth the reason for the invalidity of the
4 signature. If the election commissioner or county clerk determines
5 that a signer has affixed his or her signature more than once
6 to any page or pages of the petition and that only one person
7 is registered by that name, the election commissioner or county
8 clerk shall prepare in writing a certification under seal setting
9 forth the name of the duplicate signature and shall count only the
10 earliest dated signature. The election commissioner or county clerk
11 shall deliver all pages of the petition and the certifications to
12 the Secretary of State within forty days after the receipt of such
13 pages from the Secretary of State. The delivery shall be by hand
14 carrier, by use of law enforcement officials, or by certified mail,
15 return receipt requested. The Secretary of State may grant to the
16 election commissioner or county clerk an additional ten days to
17 return all pages of the petition in extraordinary circumstances.

18 (3) Upon receipt of the pages of the petition, the
19 Secretary of State shall issue a written receipt indicating the
20 number of pages of the petition that are in his or her custody.
21 When all the petitions and certifications have been received by
22 the Secretary of State, he or she shall strike from the pages of
23 the petition all but the earliest dated signature of any duplicate
24 signatures and such stricken signatures shall not be added to the
25 total number of valid signatures. Not more than twenty signatures

1 on one sheet shall be counted. All signatures secured in a manner
2 contrary to sections 32-1401 to 32-1416 and section 8 of this act
3 shall not be counted. Clerical and technical errors in a petition
4 shall be disregarded if the forms prescribed in sections 32-1401
5 to 32-1403 are substantially followed. The Secretary of State shall
6 total the valid signatures and determine if constitutional and
7 statutory requirements have been met. The Secretary of State shall
8 immediately serve a copy of such determination by certified or
9 registered mail upon the person filing the initiative or referendum
10 petition. If the petition is found to be valid and sufficient,
11 the Secretary of State shall proceed to place the measure on the
12 general election ballot.

13 (4) The Secretary of State shall provide a method
14 of determining the validity of signatures affixed digitally or
15 electronically pursuant to section 8 of this act.

16 ~~(4)~~ (5) The Secretary of State may adopt and promulgate
17 rules and regulations for the issuance of all necessary forms and
18 procedural instructions to carry out this section.

19 Sec. 10. Section 32-1412, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 32-1412 (1) If the Secretary of State refuses to place on
22 the ballot any measure proposed by an initiative petition presented
23 at least four months preceding the date of the election at which
24 the proposed law or constitutional amendment is to be voted upon
25 or a referendum petition presented within ninety days after the

1 Legislature enacting the law to which the petition applies adjourns
2 sine die or for a period longer than ninety days, any resident may
3 apply, within ten days after such refusal, to the district court
4 of Lancaster County for a writ of mandamus. If it is decided by
5 the court that such petition is legally sufficient, the Secretary
6 of State shall order the issue placed upon the ballot at the next
7 general election.

8 (2) On a showing that an initiative or referendum
9 petition is not legally sufficient, the court, on the application
10 of any resident, may enjoin the Secretary of State and all other
11 officers from certifying or printing on the official ballot for the
12 next general election the ballot title and number of such measure.
13 If a suit is filed against the Secretary of State seeking to enjoin
14 him or her from placing the measure on the official ballot, the
15 person who is the sponsor of record of the petition shall be a
16 necessary party defendant in such suit.

17 (3) Such suits shall be advanced on the court docket and
18 heard and decided by the court as quickly as possible. Either party
19 may appeal to the Court of Appeals within ten days after a decision
20 is rendered. The appeal procedures described in the Administrative
21 Procedure Act shall not apply to this section.

22 (4) The district court of Lancaster County shall have
23 jurisdiction over all litigation arising under sections 32-1401 to
24 32-1416 and section 8 of this act.

25 Sec. 11. Section 84-205, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 84-205 The duties of the Attorney General shall be:

3 (1) To appear and defend actions and claims against the
4 state;

5 (2) To investigate, commence, and prosecute any and all
6 actions resulting from violations of sections 32-1401 to 32-1417
7 and section 8 of this act;

8 (3) To consult with and advise the county attorneys, when
9 requested by them, in all criminal matters and in matters relating
10 to the public revenue. He or she shall have authority to require
11 aid and assistance of the county attorney in all matters pertaining
12 to the duties of the Attorney General in the county of such county
13 attorney and may, in any case brought to the Court of Appeals or
14 Supreme Court from any county, demand and receive the assistance of
15 the county attorney from whose county such case is brought;

16 (4) To give, when required, without fee, his or her
17 opinion in writing upon all questions of law submitted to him or
18 her by the Governor, head of any executive department, Secretary
19 of State, State Treasurer, Auditor of Public Accounts, Board of
20 Educational Lands and Funds, State Department of Education, Public
21 Service Commission, or Legislature;

22 (5) At the request of the Governor, head of any executive
23 department, Secretary of State, State Treasurer, Auditor of Public
24 Accounts, Board of Educational Lands and Funds, State Department of
25 Education, or Public Service Commission, to prosecute any official

1 bond or any contract in which the state is interested which is
2 deposited with any of them and to prosecute or defend for the
3 state all civil or criminal actions and proceedings relating to
4 any matter connected with any of such officers' departments if,
5 after investigation, he or she is convinced there is sufficient
6 legal merit to justify the proceeding. Such officers shall not
7 pay or contract to pay from the funds of the state any money for
8 special attorneys or counselors-at-law unless the employment of
9 such special counsel is made upon the written authorization of the
10 Governor or the Attorney General;

11 (6) To enforce the proper application of money
12 appropriated by the Legislature to the various funds of the state
13 and prosecute breaches of trust in the administration of such
14 funds;

15 (7) To prepare, when requested by the Governor, Secretary
16 of State, State Treasurer, or Auditor of Public Accounts or any
17 other executive department, proper drafts for contracts, forms, or
18 other writings which may be wanted for the use of the state and
19 report to the Legislature, whenever requested, upon any business
20 pertaining to the duties of his or her office;

21 (8) To pay all money received, belonging to the people
22 of the state, immediately upon receipt thereof, into the state
23 treasury;

24 (9) To keep a record in proper books provided for that
25 purpose at the expense of the state, a register of all actions and

1 demands prosecuted or defended by him or her in behalf of the state
2 and all proceedings had in relation thereto, and deliver the same
3 to his or her successor in office;

4 (10) To appear for the state and prosecute and defend all
5 civil or criminal actions and proceedings in the Court of Appeals
6 or Supreme Court in which the state is interested or a party. When
7 requested by the Governor or the Legislature, the Attorney General
8 shall appear for the state and prosecute or defend any action or
9 conduct any investigation in which the state is interested or a
10 party before any court, officer, board, tribunal, or commission;

11 (11) To prepare and promulgate model rules of procedure
12 appropriate for use by as many agencies as possible. The Attorney
13 General shall add to, amend, or revise the model rules as necessary
14 for the proper guidance of agencies;

15 (12) To include within the budget of the office
16 sufficient funding to assure oversight and representation of the
17 State of Nebraska for district court appeals of administrative
18 license revocation proceedings under section 60-498.04; and

19 (13) To create a Child Protection Division to be staffed
20 by at least three assistant attorneys general who each have five or
21 more years of experience in the prosecution or defense of felonies
22 or misdemeanors, including two years in the prosecution or defense
23 of crimes against children. Upon the written request of a county
24 attorney, the division shall provide consultation and advise and
25 assist in the preparation of the trial of any case involving a

1 crime against a child, including, but not limited to, the following
2 offenses:

- 3 (a) Murder as defined in sections 28-303 and 28-304;
4 (b) Manslaughter as defined in section 28-305;
5 (c) Kidnapping as defined in section 28-313;
6 (d) False imprisonment as defined in sections 28-314 and
7 28-315;
8 (e) Child abuse as defined in section 28-707;
9 (f) Pandering as defined in section 28-802;
10 (g) Debauching a minor as defined in section 28-805; and
11 (h) Offenses listed in sections 28-813, 28-813.01, and
12 28-1463.03.

13 Any offense listed in subdivisions (a) through (h) of
14 this subdivision shall include all inchoate offenses pursuant to
15 the Nebraska Criminal Code and compounding a felony pursuant to
16 section 28-301. Such crimes shall not include matters involving
17 dependent and neglected children, infraction violations, custody,
18 parenting time, visitation, or other access matters, or child
19 support. If the county attorney declines in writing to prosecute
20 a case involving a crime against a child because of an ethical
21 consideration, including the presence or appearance of a conflict
22 of interest, or for any other reason, the division shall, upon the
23 receipt of a written request of the county attorney, the Department
24 of Health and Human Services, the minor child, the parents of
25 the minor child, or any other interested party, investigate the

1 matter and either decline to prosecute the matter or initiate the
2 appropriate criminal proceedings in a court of proper jurisdiction.

3 For purposes of this subdivision, child or children shall
4 mean an individual or individuals sixteen years of age or younger.

5 Sec. 12. Original sections 32-101, 32-117, 32-118,
6 32-628, 32-1401, 32-1402, 32-1405, 32-1409, 32-1412, and 84-205,
7 Reissue Revised Statutes of Nebraska, are repealed.